(1) No. .....

Supreme Court, U.S.
FILED

IN THE 93 2025 MAY 24 1994

OFFICE OF THE CLERK

Supreme Court of the United States

OCTOBER TERM, 1993

JUDITH SPALETTA,

Petitioner,

V.

COUNTY OF MENDOCINO EMPLOYEES RETIREMENT ASSOCIATION

and COUNTY OF MENDOCINO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

PETITION FOR WRIT OF CERTIORARI

JAMES REYER, ESQUIRE
Post Office Box 5876
Santa Rosa, California 95402
(707) 576-1244

Counsel for Petitioner

54pp

QUESTIONS PRESENTED

1. Whether the failure of a state court of appeal in its November 22 Decision (1) to find either a "wrongful act" of refusal by Petitioner to attend a yet to be scheduled second medical examination or (2) to find a right in the state statute under review for a county retirement board to order a second and possibly third medical examination to determine "the existence of disability," in affirming a state superior court preliminary injunction, compelling Petitioner to attend that second medical examination, deprived Petitioner of her right to Due Process of Law, secured by the Fourteenth Amendment, when Petitioner's substantive physical and psychological medical privacy rights are themselves specifically secured from

invasion under Article I, Section 1, the Constitution of the State of California?

2. Whether a state appellate court may license the use of equity as a remedy in the conspicuous absence of the finding of a "wrongful act" and in the equally conspicuous absence of the finding of a right for a county retirement board to order a second medical examination to determine "the existence of disability" in an administrative review of an application for retirement benefits, when there has by the failure of such findings been no statement of a cause of action, and the invoking of equity to enforce compliance with an undetermined right in the absence of a cause of action is arbitrary and capricious, inconsistent with Petitioner's rights to procedural Due Process of Law, secured by the Fourteenth Amendment?

TABLE OF CONTENTS

Table of Authorities	iv
Petition	1
Court Decision and Orders and Administrative Orders Below	2
Jurisdiction	4
Applicable Constitutional Provisions and Statutes	5
Statement of the Case	6
A. Nature of the Case	6
B. Petitioner's physical and psychological medical privacy rights are secured from invasion by Article I, Section 1, of the Constitution of the State of California.	8
C. The November 22 Decision	10
REASONS FOR GRANTING WRIT	16
CONCLUSION	21
APPENDIX - DECISIONS ORDERS AND APPLICABLE DOCUMENTS OF RECORD	A1

TABLE OF AUTHORITIES

CASES

Arizona v. Washington,
434 U.S. 497 (1978) 17

Baldwin's Rep. 218 20

Bank of America v. Williams (1948)
89 Cal. App. 2d 151 16

Binder v. Superior Court (1987),
196 Cal. App. 3d 893
242 Cal. Rptr. 231 9

Britt v. Superior Court (1978),
20 Cal. 3d 844
143 Cal. Rptr. 695
574 P.2d 766 9

Davis v. Superior Court
(Williams) (1992)
7 Cal. App. 4th 1008,
9 Cal. Rptr. 2d 331 9

Morrisey v. Brewer,
408 U.S. 471 (1972) 17

Patterson v. Colorado Ex Rel.
Atty. Gen.,
205 U.S. 459 (1907) 19

Postal Telegraph Cable Co. v.
City of Newport, Ky.,
247 U.S. 464 (1918) 19

Tracy v. Ginsberg,
205 U.S. 170 (1907) 19

TABLE OF AUTHORITIES (CONTINUED)

Vinson v. Superior Court (1987)
43 Cal. 3d 833
239 Cal. Rptr. 292 9

Willis v. Lauridson (1911)
161 Cal. 106
118 P. 530 16

Wolf v. McDonnell,
418 U.S. 539 (1974) 17

CONSTITUTIONAL PROVISIONS,
STATUTES AND RULES

FOURTEENTH AMENDMENT
UNITED STATES CONSTITUTION 5,7

ARTICLE I, § 4
CALIFORNIA CONSTITUTION 5,7,8

California Government Code,
Section 31723 6,8,13,14,15

No.

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1993

JUDITH SPALETTA,
Petitioner,

v.

COUNTY OF MENDOCINO EMPLOYEES
RETIREMENT ASSOCIATION
and COUNTY OF MENDOCINO,
Respondents.

PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEAL,
STATE OF CALIFORNIA
FIRST DISTRICT, DIVISION FOUR

Petitioner Judith Spaletta respectfully prays that a Writ of Certiorari issue to review the November 22 Decision of the state court of appeal, affirming a state superior court preliminary mandatory injunction, compelling Petitioner to attend a second medical examination affecting her state constitutionally secured

rights to physical and psychological medical privacy.

COURT DECISION AND ORDERS AND ADMINISTRATIVE ORDERS BELOW

The state court of appeal decision, entered November 22, 1993 (the "November 22 Decision"), which is not published in official reports, is set forth at Pages A1-A14 of the Appendix. The state court of appeal order, entered December 20, 1993, denying Petitioner's petition for rehearing is set forth at Page A15 of the Appendix.

The March 15, 1993 order of the state superior court that is the subject of the state court of appeal November 22 Decision, which is not published in official reports, is set

forth at Pages A17 - A18 of the Appendix.

The May 22, 1993 administrative order of the retirement administrator, ordering Petitioner to multiple medical examinations that the court of appeals properly found in its November 22 Decision was ruled by the superior court to be an illegitimate order, which is not published in official reports, is set forth at Pages A21 - A23 of the Appendix.

The August 12, 1993 motion of the retirement board board of directors, ordering a single joint medical examination before two (2) doctors, without setting the time, date and place for such an examination, which is not published in official reports, is set forth at Pages A24-A25 of the Appendix.

The August 21, 1993 administrative order of the chairman and retirement administrator, ordering multiple medical examinations without setting the time, date and place for those examinations, which is not published in official reports, is set forth at Pages A26 - A27 of the Appendix.

The February 23, 1994 order of the Supreme Court of the State of California, denying Petitioner's discretionary petition for review before the state court of last resort, which is not published in official reports, is set forth at Page A16 of the Appendix.

JURISDICTION

The order of the Supreme Court of the State of California was entered on February 23, 1994. Jurisdiction of this Court is invoked under 28 U.S.C.

1257, 28 U.S.C. 2101 (c) and Supreme Court Rules 13.1 and 13.4.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTE

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT XIV

"Section 1. . . .
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE I, SECTION 1

"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness and privacy."

California Government Code,
Section 31723

"Right to require proof of disability. The board may require such proof, including a medical examination at the expense of the member, as it deems necessary or the board upon its own motion may order a medical examination to determine the existence of disability."

STATEMENT OF THE CASE

A. Nature of the Case

This case is about whether state courts will protect an average citizen from the invasion of her physical and psychological person.

This case is about whether the constitutionally secured medical privacy rights of an average person will be honored -- or will be breached with careless indifference.

The state appellate court in its November 22 Decision affirming a preliminary mandatory injunction of a

trial court, ordering Petitioner to a second and possibly third medical examination (1) failed to find that Petitioner engaged in a "wrongful act" supporting such an injunction and (2) failed to find a right in the state statute under examination for a county retirement board to order a second medical examination to determine "the existence of disability." November 22 Decision, at Appendix Pages A1 - A14.[1]

---

[1] The issue of the deprivation of Petitioner's right to Due Process of Law, secured by the Fourteenth Amendment to the United States Constitution, and deprivation of her accompanying substantive medical privacy rights to her physical and psychological person, secured by the Constitution of the State of California, was first raised in Petitioner's petition for review with the Supreme Court of the State of California, immediately after the state appellate court denied Petitioner's petition for rehearing. Petitioner's Petition for Review, at Pages 1 and 2.

B. Petitioner's physical and psychological medical privacy rights are secured from invasion by Article I, Section 1, of the Constitution of the State of California.

Petitioner under the Constitution of the State of California has the inalienable substantive right to pursue and obtain privacy. Article I, Section 1, Constitution of the State of California. See Page 5 hereof.

In accordance with her application for physical disability presently before the retirement board, Petitioner has already submitted to the board the single medical examination required by the board under California Government Code, Section 31723, to determine "the existence of disability." See Pages 12 to 13 hereof.

Notwithstanding the fact that the review of Petitioner's application for retirement disability is a simple

administrative procedure reviewing her application for physical disability retirement, even in cases of plenary litigation, the state constitutional right of privacy does not permit discovery of private information that is not relevant to the ongoing litigation and, when relevant, the scope of disclosure must be narrowly circumscribed, drawn with narrow specificity, and must proceed in the least intrusive manner. Davis v. Superior Court (Williams) 7 Cal. App. 4th 1008, 9 Cal. Rptr. 2d 331, 334, 335, citing inter alia Vinson v. Superior Court (1987) 43 Cal. 3d 833, 239 Cal. Rptr. 292, 740 P.2d 404; Britt v. Superior Court (1978) 20 Cal. 3d 844, 143 Cal. Rptr. 695, 574 P.2d 766 and Binder v. Superior Court (1987) 196 Cal. App. 3d 893, 242 Cal. Rptr. 231.

C. The November 22 Decision

1. No Finding of a "Wrongful Act."

The state court of appeal in its November 22 Decision fails in its findings of fact to find that Petitioner engaged in a "wrongful act" justifying injunctive relief. The sole declination by Petitioner to attend a medical examination recognized by the November 22 Decision is one that the trial court ruled was justified by Petitioner, because the May 22 underlying administrative order was issued by the retirement administrator rather than by the Association's board of directors:

> "At the same time, the County applied to the Association on her behalf for disability retirement. Retirement Administrator Tim Knudson ordered Spaletta to submit to a medical examination. When Spaletta refused, the Association requested an injunction compelling her to attend the examination. The

> court sustained Spaletta's demurrer to the complaint with leave to amend, ruling that the Association's complaint failed to state a claim because an underlying administrative order was issued by the retirement administrator rather than the Association's board of directors."
>
> November 22 Decision, at Page A3.

The November 22 Decision in its section entitled "FACTS" recognizes that Petitioner did not commit a "wrongful act" in her declination to comply with the May 22 Tim Knudson administrative order. The November 22 Decision in its "FACTS" does not determine that Petitioner refused to attend any medical examination under the first and second amended complaints. None were ever scheduled. See November 22 Decision, "FACTS," at Appendix Pages A2 - A5.

2. Second and third medical examinations neither (1) scheduled nor (2) authorized by board of directors.

The August 21 administrative order, attached as Exhibit I to the second amended complaint that is the subject of the November 22 Decision, documents that the second and third medical examinations were not authorized by the August 12 motion of the board of directors, attached as Exhibit H to and referred to in that second amended complaint. See August 21 administrative order, at Appendix Pages A26 - A27. Compare with August 12 motion of board of directors, at Appendix Pages A24 - A25.

3. Petitioner had already supplied the retirement board at her own expense with a medical examination required by the Standard Application of the retirement board to prove the existence of her disability, the single medical examination

permitted by California Government Code, Section 31723.

Petitioner Spaletta, to prove the existence of her physical disability, has already supplied the retirement board with the single medical examination permitted by California Government Code, Section 31723. See Section 31723, at Page 6 hereof.

This medical examination at Petitioner's own expense was required by Section C of the Board's Standard Application for Disability Retirement. See Appendix Pages A19 - A20.

4. The November 22 Decision fails to find in the state statute under examination in the appeal of the injunctive order authority to order a second and third medical examination to determine "the existence of disability."

The statutory framework created by the state legislature in delegating authority to the retirement board to

determine the existence of Petitioner's physical disability clearly relies upon a single physical examination for the sole purpose of proving "the existence of disability[:]"

> "§ 31723. Right to require proof of disability.
>
> "The board may require (emphasis added) such proof, including a medical examination at the expense of the member (emphasis added), as it deems necessary or (emphasis added) the board upon its own motion may order a medical examination to determine the existence of disability (emphasis added)."

Nevertheless, the state appellate court in its November 22 Decision ignores the disjunctive delegation to the board of power to require a medical examination at the expense of the member or upon motion to order a medical examination "to determine the existence of disability."

The November 22 Decision also ignores (1) that medical examination may be required only "to determine the existence of disability," and (2) its prior finding that the trial court had ruled that the underlying May 22 administrative order was illegitimate and Petitioner's declination to submit to that illegitimate order was reasonable and well-founded:[2]

> "The board had a right to order a medical examination to determine whether Spaletta suffered injury during the course of employment. (See Gov. Code, § 31723. (emphasis added) Her refusal to submit to the examination constituted a wrongful act."
> November 22 Decision. Appendix Pages A4-A5.

---

2 The sole finding of a declination by Petitioner made by the November 22 Decision is Petitioner's refusal to submit to an underlying administrative order issued by the retirement administrator rather than the retirement board's board of directors, ruled by the trial court to be an illegitimate order.
November 22 Decision, at Appendix Pages A1 - A14. See also Page 3 hereof.

The failure of the court of appeal to find either a "wrongful act" or find a right of a retirement board to order a second medical examination "to determine the existence of disability" invalidates under Bank of America v. Williams (1948) 89 Cal. App. 2d 151, 153, cited in the November 22 Decision and Willis v. Lauridson (1911) 161 Cal. 106, 118 P. 530 referred to therein, the implementation of an injunctive order against Petitioner's medical privacy rights. November 22 Decision, at Appendix Page A7.

REASONS FOR GRANTING WRIT

(1) Certiorari should be granted, because the state appellate court in an appeal of a lower court mandatory injunction ordering a prospective invasion of Petitioner's physical and psychological medical privacy rights, secured specifically in the California Constitution, has decided its November 22 Decision contrary to the legal standards for granting equitable relief

stated therein and in conflict with Petitioner's right to Due Process of Law, secured by the Fourteenth Amendment to the United States Constitution and the decisions of this Court with respect thereto.

Procedural Due Process necessitates a reasoned decision to provide the assurance (critical to fairness as well as the appearance of fairness) that a decision depriving a litigant of a right implicating a fundamental constitutional right, specifically secured by the state constitution of the state in question, is not capricious and is based on an evaluation and close scrutiny of the fairly presented record in the action at hand. Wolf v. McDonnell, 418 U.S. 539, 563-565 (1974). Morrisey v. Brewer, 408 U.S. 471, 489 (1972). Arizona v. Washington, 434 U.S. 497, 517 (1978).

Petitioner under the Constitution of the State of California has the specifically secured inalienable and fundamental right to privacy to her physical and psychological person. See Statement of the Case, Part B., at Pages 8 and 9 hereof.

The November 22 Decision of the state appellate court arbitrarily attempts to strip that substantive right to medical privacy from Petitioner's grasp without cautiously determining the right of a pension board in a pension application proceeding to require a second, extra medical examination (and possibly a third) and without finding a "wrongful act" upon which to base injunctive relief for a yet to be scheduled second, extra medical examination. See Statement of the Case, Part C., at Pages 6 to 16 hereof.

The failure of the state appellate court to find a "wrongful act" and the equally significant failure of that court in its November 22 Decision to find statutory authority for the retirement board to order a second, extra medical examination "to determine the existence of disability" can only be viewed as an arbitrary denial of Petitioner's right to medical privacy. Postal Telegraph Cable Co. v. City of Newport, Ky., 247 U.S. 464 (1918). See also Tracy v. Ginzberg, 205 U.S. 170, 178 (1907) and Patterson v. Colorado Ex Rel. Atty. Gen., 205 U.S. 459, 464-465 (1907) (Justice Harlan dissenting).

The ungainly failures in the November 22 Decision of the state appellate court to find a "wrongful act" and to determine a statutory right out of which any wrongful act would be a necessary antecedent can in no sense

satisfy the fundamental principle that injunctions ought not issue unless the right alleged to be invaded or threatened is clear:

> "There is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity, that ought never to be extended, unless to cases of great injury, where courts of law cannot afford an adequate and commensurate remedy in damages. The right must be clear, the injury impending and threatened so as to be averted only by the protecting preventative process of injunction." Baldwin's Rep. 218.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the state appellate court November 22 Decision.

In the alternative, Petitioner respectfully requests this Court, in accordance with Supreme Court Rule 16.1, to summarily reverse the court of appeal November 22 Decision and direct the court of appeal to reverse the March 15, 1993 order of the superior court.

Dated: May 24, 1994

Respectfully submitted,

/s/ James Reyer, Esq.

James Reyer, Esquire
Post Office Box 5876
Santa Rosa, CA 95402-5876
(707) 576-1244

Counsel to Petitioner

APPENDIX

DECISIONS ORDERS AND APPLICABLE DOCUMENTS OF RECORD

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

COPY

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

FILED
NOV 22 1993

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, et al.,
Plaintiffs and Respondents,

v. A061726

JUDITH SPALETTA,
Defendant and Appellant.
Mendocino County
(Super. Ct. No. 64981)

Respondents Mendocino County Employees' Retirement association (Association) an the County of Mendocino (County) sought an injunction to compel Judith Spaletta to submit to a

medical examination in order to determine her eligibility for disability retirement. The trial court granted the mandatory preliminary injunction. Spaletta appeals, contending that the trial court erred by (1) invoking its equitable jurisdiction because the Association's claims were dubious; (2) admitting incompetent and hearsay evidence; and overruling her demurrer to the complaint. We affirm the judgment.

I. FACTS

Appellant Judith Spaletta worked as a microfilm clerk in the office of the Mendocino County Clerk/Recorder. She was /1/ exposed to a number of toxic environmental factors in the County courthouse which Spaletta alleged left her totally and permanently disabled. After a four-year leave of absence, Spaletta failed to return to work and

the County tried to terminate her. Spaletta appealed to the County's civil service commission, which transferred the matter to the Association.

At the same time, the County applied to the Association on her behalf for disability retirement. Retirement Administrator Tim Knudson ordered Spaletta to submit to a medical examination. When Spaletta refused, the Association requested an injunction compelling her to attend the examination. The court sustained Spaletta's demurrer to the complaint with leave to amend, ruling that the Association's complaint failed to state a claim because an underlying administrative order was issued by the retirement administrator rather than the Association's board of directors.

The board then ordered Spaletta to

submit to the medical examination and the Association filed its first amended complaint. Spaletta again demurred to the complaint which was again sustained with leave to amend. The court held that the, as Spaletta's employer, should be a party to the lawsuit to determine whether the complaint stated a claim.

The County joined the suit and a second amended complaint was filed. The Association filed an application for an order to show cause why the preliminary injunction should not be granted. The Association's administrator filed a /2/ declaration in support of that application. Spaletta demurred to this complaint on the ground that the County failed to state a cause of action. The trial court overruled the demurrer and partially granted the preliminary

mandatory injunction. The court ordered Spaletta to appear for a medical examination by any physician chosen by the Association, as long as the place of the examination was no further from Spaletta's home than the office of her treating physician who was located 75 miles away.

II. EQUITY

First, Spaletta contends that the trial court erred in invoking its equitable jurisdiction in this case because the County's claims were dubious. Specifically, she argues that: (1) there is no legal authority for courts to enforce orders by the retirement board, (2) the Association stated no cause of action, and (3) the County made no adequate showing of injury and stated no cause of action.

We consider each of these contentions in turn.

It has long been recognized in administrative matters that a retirement board has a valid independent right to make its own determination about whether an applicant suffered injury in the course and within the scope of his or her employment. (Summerford v. Board of Retirement (1977) 72 Cal.App.3d 128, 132.) The board may require this proof, including a medical examination at the applicant's expense, as is deemed necessary or the board, on its own motion, may order an examination to determine the existence of disability. /3/ (See Gov. Code, § 31723.)

There is no explicit statutory authority permitting courts to enforce board-ordered medical examinations. However, this authority can be inferred

from the courts' broad equitable powers. Equity will provide a remedy when there is a wrongful act constituting the cause of action, and a showing of the inadequacy of the remedy at law. (See Bank of America v. Williams (1948) 89 Cal.App.2d 21, 23 [complaint must state cause of action]; Golden Gate S. T., Inc. v. San Francisco (1937) 21 Cal.App.2d 582, 584 [no injunction may issue if plaintiff has adequate remedy at law]; see also 5 Witkin, Cal. Procedure (3d ed. 1985), Pleading, § 774, pp. 218-222.) The board had a right to order a medical examination to determine whether Spaletta suffered injury during the course of employment. (See Gov. Code, § 31723.) Her refusal to submit to the examination constituted a wrongful act. Money damages were not available to compensate

for Spaletta's refusal to obey the order, so equitable remedies are appropriate. (See, e.g., Golden Gate S. T., Inc. v. San Francisco, supra, 21 Cal.App.2d at p. 584.) The lack of an adequate remedy for Spaletta's refusal to obey the order stems from the fact that, without the results of the medical examination, the retirement board does not have sufficient evidence to evaluate her application. As a result, any decision the board makes would be immediately vulnerable to challenge for lack of proper evidentiary basis. /4/

We find that the Association has stated a valid cause of action and the court's exercise of equitable jurisdiction was appropriate. If we were to hold otherwise, the board's authority to order medical examinations would be meaningless. Applicants could

refuse to be examined and leave the board without the necessary evidence to make a valid disability determination. We are satisfied that the trial court's equitable jurisdiction extends to compelling employees to submit to medical examination in appropriate circumstances.

The County has also made a showing sufficient to merit exercise of the court's equitable jurisdiction. Spaletta has been on leave without pay for almost seven years and her disability application has been pending for two years. Her refusal to submit to the medical examination leaves the County in limbo regarding her status as an employee. If the board denies her application on the basis that she is not physically or mentally incapacitated, the County must either reinstate

Spaletta or file a petition for writ of mandate against the Association for reaching its conclusion on an inadequate record. (See Gov. Code, § 31725.) The absence of an adequate remedy at law is a reason for the exercise of equity jurisdiction. (Bond v. Bulgheroni (1932) 215 Cal. 7, 10.) As both the Association and the County make adequate showings of injury and stated valid causes of action, the trial court's injunction was proper. /5/

III. EVIDENCE

Spaletta next contends that the trial court erroneously admitted incompetent and hearsay evidence. In particular, she complains that Retirement Administrator Tim Knudson's statements in support of an application for an order to show cause consisted of facts not personally known to him.

In his declaration, Knudson stated that he "believe[d]" Spaletta traveled to the Bay Area and to Sacramento to receive medical attention. However, this statement did not go to the issue of whether injunctive relief was proper, but to the distance Spaletta should be required to travel for her medical examination. The trial court considered Knudson's testimony, but apparently gave more credence to Spaletta's evidence suggesting that a more limited scope of travel would be appropriate. The court ruled that Spaletta should be ordered to travel "no farther from her residence than the distance from her residence to that of her treating physician" in Corte Madera -- about 75 miles. Consequently, whether Kundson's testimony was based on personal knowledge is irrelevant because the court ruled in Spaletta's favor on

this issue. If there is any error, it was necessarily harmless.

Spaletta also contends that Knudson did not competently testify, as the complaint alleged, that the Association did "not have before it the evidence necessary to make a determination as to whether Judith Spaletta is permanently incapacitated for the performance of her duties /6/ ...." She argues that his testimony on this issue was conclusory and, because he did not testify to the facts on which these conclusions were based, the Association lacked sufficient facts to support an order for injunctive relief. This contention lacks merit.

Complaints need only contain a sufficient statement of the ultimate facts to satisfy the court that there exist grounds for temporary relief. (See Porters Bar Dredging Co. v. Beaudry

(1911) 15 Cal.App. 751.) Evidentiary allegations are unnecessary and improper in a complaint. Here, Knudson's testimony does not include detailed evidence supporting the allegations in his affidavit. However, such allegations are not required to sustain the complaint. Because Knudson's statements were supported by sufficient facts to satisfy the court that grounds for relief existed, the trial court properly sustained the injunction.

IV. DEMURRER

Finally, Spaletta contends that the trial court should have sustained the demurrer because neither the County nor the Association stated a cause of action in equity in their second amended complaint. As we have already found that both did state valid causes of

action, the trial court properly overruled Spaletta's demurrer.

V. CONCLUSION

The preliminary injunction is affirmed. /7/

Reardon, J.

WE CONCUR:

Anderson, P.J.

Poche, J.

A061726 /8/

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 4

MENDOCINO COUNTY EMPLOYEES' RETIREMENT
vs. SPALETTA, JUDITH A061726
Mendocino County No. 64981

FILED
DEC 20, 1993

BY THE COURT:

The petition for rehearing is denied.

Dated: DEC 20, 1993

Anderson, P.J.

First Appellate District, Division Four,
No. A061726
S037061

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION Et Al., Respondents

v.

JUDITH SPALETTA, Appellant

SUPREME COURT
FILED
FEB 23 1994
Robert Wandruff Clerk

DEPUTY

Appellant's petition for review is DENIED.

LUCAS

Chief Justice

448

FILED
MAR 15 1993
Mendocino
Superior
Court Clerk
by _____

Phyl Allen Diri Bar number 100587
Attorney at Law
303 South Hortense Street
Ukiah, CA 95482
(707) 468-5368

Attorney for Defendant/Cross-complaintant
JUDITH SPALETTA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

COUNTY OF MENDOCINO EMPLOYEES RETIREMENT ASSOCIATION, and COUNTY OF MENDOCINO

Plaintiffs,

v.
JUDITH SPALETTA,
Defendant.

No. 64981

ORDER

GOOD CAUSE appearing, it is hereby ordered that:

1. **DEMURRER.** The demurrer to the Second Amended Complaint is overruled.

2. **Preliminary Mandatory Injunction.** Judith Spaletta is ordered to submit to a medical examination at a distance no farther from her residence than the distance from her residence to that of her treating physician. The defendant is not ordered to have a psychiatric examination. Denial of plaintiffs' request for a psychiatric examination is without prejudice to renewal of the request following the completion of the physical examination if there is a showing of need for such examination. The physical examination by a board-selected specialist may rule out the necessity of such an examination or in the alternative may provide a basis for making a valid request for such an examination.

Dated: March 15, 1993

Conrad L. Cox
Judge of the Superior Court

RETIREMENT BOARD STANDARD APPLICATION REQUIRING SINGLE MEDICAL EXAMINATION REQUIRED UNDER CALIFORNIA GOVERNMENT CODE, SECTION 31723, A MEDICAL EXAMINATION ALREADY SUPPLIED TO RETIREMENT BOARD BY PETITIONER AT HER OWN EXPENSE

C. NATURE OF INJURY OR DISEASE

The following information must be supplied (emphasis added) to the Retirement Board to assist them in determining the nature and extent of the Member's disability:

1. In your own words, describe the medical nature of the Member's injury or illness.

_____

_____

2. A medical report from the physician describing the nature and extent of the illness or injury. (emphasis added) (The physician and the Retirement Board should be furnished a detailed description of the Member's job.)

3. Other medical reports or results of any other examination that the Member may have had in connection with this illness or injury.

. . . .

MAY 22 TIM KNUDSON ADMINISTRATIVE ORDER RULED ILLEGITIMATE AND UNAUTHORIZED BY LOWER COURT FOR WANT OF AUTHORIZATION BY BOARD OF DIRECTORS OF RETIREMENT BOARD

ANTHONY E. GRAHAM, ESQUIRE
GRAHAM, CONE, MCKINSEY, ROBERTS & JACKSON
45060 UKIAH STREET
POST OFFICE BOX 1090
MENDOCINO, CALIFORNIA 95460

ATTORNEYS FOR COUNTY OF MENDOCINO EMPLOYEES' RETIREMENT ASSOCIATION

IN RE THE MATTER OF

MARSHA YOUNG EMPLOYER OF
JUDITH SPALETTA,
APPLICANT.

DEMAND FOR MEDICAL EXAMINATIONS

GOVERNMENT CODE SECTION 31723

TO JUDITH SPALETTA AND PHYL DIRI,

HER ATTORNEY OF RECORD:

Pursuant to the provisions of Government Code Section 31723, the Mendocino County Employees' Retirement Association hereby orders the following

medical examination to determine the existence of the disability:

DR. ABBA TEER, M.D., IMMUNOLOGIST

DATE: THURSDAY, JULY 16, 1992

TIME: 1:45 P.M.

PLACE: DR. ABBA TEER'S OFFICE
450 SUTTER STREET, SUITE 2534
SAN FRANCISCO, CALIFORNIA

ANDREW D. WHYMAN, PSYCHIATRIST

DATE: FRIDAY, JULY 17, 1992

TIME: 10:00 A.M.

PLACE: DR. ANDREW WHYMAN'S OFFICE
1 DANIEL BURNHAM COURT SUITE 345-C
SAN FRANCISCO, CALIFORNIA

Judith Spaletta is hereby ordered to attend the examination as stated above.

Dated: May 22, 1992

Timothy Knudson, Retirement Administrator

/1/

(CT 63)

August 12 Motion of Retirement Board Board of Directors on August 12, 1993 requiring attendance at a single joint medical examination without setting time, date or place

6. ATTORNEY PHIL DIRI

A. Attorney Phil Diri and Judith Spaletta entered the meeting at 10:05 AM. After lengthy discussion regarding the doctors used by the retirement board. The following motion was made by Knudsen and seconded by King, "Pursuant to Government Code Section #31723 that Judith Spaletta be required to attend a medical examination with Drs. Abba Teer and Andrew Whyman. That the retirement association will reimburse Judith Spaletta reasonable travel expenses."

Roll call vote as follows: Ayes:Carter, Worster, King, Duman, Kunudsen. Noes: Lucido, Pintant. Absent: Hickey, Butcher. Motion carried 5-2.

Attorney Diri and Mrs. Spaletta left the meeting at 10:30 am.

(CT 274)

AUGUST 21 ADMINISTRATIVE ORDER ORDERING SECOND AND THIRD MEDICAL EXAMINATIONS WITHOUT SETTING TIME, PLACE OR DATE

ANTHONY E. GRAHAM, ESQ., BAR NO. 61324
GRAHAM, CONE, MCKINNEY, ROBERTS & JACKSON
45060 UKIAH STREET
POST OFFICE BOX 1090
MENDOCINO, CA 95460
Telephone: (707) 937-0503

Attorneys for COUNTY OF MENDOCINO EMPLOYEES' RETIREMENT ASSOCIATION

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

COUNTY OF MENDOCINO EMPLOYEES' RETIREMENT ASSOCIATION,
Plaintiff,

vs.

JUDITH SPALETTA,
Defendant.

Case No. 64981

ORDER FOR MEDICAL EXAMINATION PURSUANT TO GOVERNMENT CODE §31723

TO JUDITH SPALETTA AND PHYL DIRI, HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to

the provisions of Government Code §31723, the MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION does hereby order that Judith Spaletta attend medical examinations with Dr. Andrew Whyman and Dr. Abba Teer at a date and time to be scheduled.

Dated: August 31, 1992

STEVE DUMAN
Chairman of the Mendocino Employees' Retirement Association

Dated: August 21, 1992

TIMOTHY J. KNUDSEN
Retirement Administrator
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

(CT 275)